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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,836	12/18/2001	Tong Sun	KCC-14,900	4247

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EXAMINER	
KIDWELL, MICHELE M	

ART UNIT	PAPER NUMBER
3761	13

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/025,836	SUN ET AL.	
	Examiner	Art Unit	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 January 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *24-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *24-53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 3.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24 – 28, 30, 32 – 35, 39 – 40, 43 – 45, and 52 – 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Jordan (EP 0 311 344).

Regarding claim 24, the examiner notes the product by process language recited in the claims. The examiner reminds the applicant that:

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Jordan discloses an absorbent article comprising an odor control system including cellulose fibers bonded with a partially neutralized carboxylic acid odor control agent in the presences of heat for a time sufficient to cause dehydration, the absorbent article being capable of suppressing odor from at least ammonia as set forth on page 4, line 51 to page 5, line 46 and page 6, lines 4 – 7.

On page 6, lines 4 – 7, Jordan provides suitable methods for preparing the ion-exchanging cellulose derivatives that are useful as acidic buffering agents. Bridgeford (3533725) discloses the particulars of claim 1 in col. 2, lines 49 - 52, col. 6, line 69 and col. 7, lines 15 – 24.

With reference to claims 25 and 26, Jordan discloses an absorbent article wherein the cellulose fibers are treated with partially neutralized citric acid as set forth on page 3, lines 41 – 44 and page 5, lines 27 – 31.

Regarding claims 27 – 28, 30 and 32 – 35, see page 2, lines 5 – 6.

With respect to claims 39 and 40, Jordan discloses an absorbent article wherein the partially neutralized carboxylic acid odor control agent comprises a partially neutralized polycarboxylic acid as set forth on page 5, lines 36 – 39.

As to claims 43 – 45, Jordan discloses the claimed degree of neutralization as set forth on page 5, lines 51 – 53.

With reference to claim 52, Jordan discloses an article further comprising cellulose fibers which are not treated with the partially neutralized carboxylic acid odor control agent as set forth on page 4, lines 26 – 27.

Regarding claim 53, Jordan discloses the article further comprising superabsorbent material as set forth on page 2, lines 53 – 54.

Claims 24 – 28, 30, 32 – 35, 37, 39 – 40 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Herron et al. (5137537).

Herron et al. (hereinafter "Herron") discloses an absorbent article comprising an odor control system including cellulose fibers bonded with a partially neutralized carboxylic acid odor control agent in the presences of heat for a time sufficient to cause dehydration, the absorbent article being capable of suppressing odor from at least ammonia as set forth in col. 1, line 57 to col. 2, line 8; col. 3, lines 50 – 56.

The examiner contends that Herron discloses a structure identical to that as claimed in the instant application thereby providing a structure that is fully capable of performing the recited function.

With respect to claims 25 and 26, see col. 3, lines 50 – 51.

Regarding claims 27 – 28, 30, 32 – 35 and 37, see col. 16, lines 55 – 58.

With reference to claims 39 – 40, see col. 18, lines 50 – 55.

With respect to claim 52, see col. 15, lines 55 – 57.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 29, 31, 36 – 38, 41 – 42 and 49 – 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan (EP 0 311 344).

The difference between Jordan and claim 29 is the provision that the absorbent article is swimwear.

It would have been obvious to one of ordinary skill in the art to include swim wear within the scope of the Jordan invention because Jordan discloses the invention as it relates to disposable absorbent articles (col. 2, line 5) which is well known in the article to include all types of personal care absorbent products including swim wear.

As to claims 31 and 36 – 38, see the rejection of claim 29.

The difference between Jordan and claims 41 – 42 is the amount of partially neutralized hydroxyl multi-carboxylic acid contained in the odor control agent.

It would have been obvious to one of ordinary skill in the art to modify the amount of partially neutralized hydroxyl multi-carboxylic acid contained in the odor control agent since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

Regarding claims 49 – 51, see the rejection of claims 41 and 42.

Claims 29, 31, 36 and 38, 41 – 45, 49 – 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herron et al. (5137537).

The difference between Herron and claim 29 is the provision that the absorbent article is swimwear.

It would have been obvious to one of ordinary skill in the art to include swim wear within the scope of the Herron invention because Herron discloses the invention as it relates to disposable absorbent articles (col. 16, lines 55 – 58) which is well known in the article to include all types of personal care absorbent products including swim wear.

As to claims 31, 36 and 38, see the rejection of claim 29.

The difference between Herron and claims 41 – 42 is the amount of partially neutralized hydroxyl multi-carboxylic acid contained in the odor control agent.

It would have been obvious to one of ordinary skill in the art to modify the amount of partially neutralized hydroxyl multi-carboxylic acid contained in the odor control agent since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

The difference between Herron and claims 43 – 45 is the variation in the degree of neutralization.

It would have been obvious to one of ordinary skill in the art to modify the degree of neutralization in the odor control agent since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

Regarding claims 49 – 51, see the rejection of claims 41 and 42

The difference between Herron and claim 53 is the provision that the absorbent article includes superabsorbent material.

It would have been obvious to one of ordinary skill in include superabsorbent material in the absorbent article provided by Herron because the use of superabsorbent materials in absorbent articles is well known in the art due to its increased absorbent capacity and thinness.

Claims 46 – 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan (EP 0 311 344) and further in view of Trinh et al. (US 5,874,070)

The difference between Jordan and claim 46 is the provision that the odor control agent comprises a chelating agent.

Trinh et al. (hereinafter "Trinh") teaches an odor control agent further comprising a chelating agent as set forth in col. 9, lines 50 – 54.

It would have been obvious to one of ordinary skill in the art to modify the odor control agent of Jordan to include a chelating agent because the addition of the chelating agent would enhance the activity of the antimicrobial agent as taught by Trinh in col. 9, lines 50 – 54.

With reference to claims 47and 48, Trinh teaches the odor control agent comprising zinc salts as set forth in col. 8, lines 44 – 46.

Claims 46 – 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herron (5137537) and further in view of Trinh et al. (US 5,874,070)

The difference between Herron and claim 46 is the provision that the odor control agent comprises a chelating agent.

Trinh et al. (hereinafter "Trinh") teaches an odor control agent further comprising a chelating agent as set forth in col. 9, lines 50 – 54.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Herron to include a chelating agent because the addition of the chelating agent would enhance the activity of the antimicrobial agent as taught by Trinh in col. 9, lines 50 – 54.

With reference to claims 47and 48, Trinh teaches the odor control agent comprising zinc salts as set forth in col. 8, lines 44 – 46.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.
See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michele Kidwell

Michele Kidwell
March 16, 2004

JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
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